SITE C REPORT

THE SITE C DIVISION'S REPORT
on
THE REVIEW PROCEDURES
and
RECOMMENDATIONS FOR FUTURE REVIEWS

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BRITISH COLUMBIA UTILITIES COMMISSION

PEACE RIVER SITE C DIVISION

REVIEW OF B.C. HYDRO'S APPLICATION FOR AN

ENERGY PROJECT CERTIFICATE

THE SITE C DIVISION'S REPORT

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AND

RECOMMENDATIONS FOR FUTURE REVIEWS

BRITISH COLUMBIA UTILITIES COMMISSION

May 3, 1983

The Minister of Energy,
Mines and Petroleum Resources
Parliament Buildings
Victoria, B. C.

Dear Mr. Minister:

Because no precedents existed for the review of the Site C application under the British Columbia Utilities Commission Act the temporary Commissioners, Mr. Lorne E. Ryan, Mr. Earl E. Little, Mr. Robert A. Petrick and the undersigned have analyzed the proceedings and submit the attached report. It seemed appropriate that Mr. D. B. Kilpatrick, because of his position as a permanent member of the B. C. U. C. not join in this submission.

Yours very truly,

K. A. Henry, P. Eng.
Chairman, Site C Division

KAH/djk

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INTRODUCTION

The B.C. Hydro and Power Authority applied to the Cabinet of the B.C. Government for permission to build the Site C hydroelectric generating station on the Peace River near Fort St. John. The Government referred the application to the British Columbia Utilities Commission (B.C.U.C.) for a review and recommendations on how to dispose of it.

Since this was the first major energy project to be reviewed under the new B.C.U.C. Act of September 1980, no precedents had been established for the procedures to be used. The Site C Division of the Commission therefore undertook to establish the necessary procedures. This report describes the procedures that were followed and gives the Division's conclusions regarding their effectiveness and efficiency and recommendations for its improvements. The Division believes that a similar process could be applied to other large hydroelectric projects and thermal plants. Modifications might be necessary to accommodate different types and sizes of projects.

CHRONOLOGY

The following is a chronological list of the significant events in the review of the Site C application.

1980

September 11 - The Utilities Commission Act Bill No. 52 proclaimed.

September 29 - B.C. Hydro applies for an Energy Project Certificate for the Peace River Site C Hydroelectric project.

1981

April 23 - The Site C application is referred to the B.C.U.C.

- Four temporary Commissioners are appointed to the B.C.U.C., along with one permanent Commissioner, to form the Site C Division of the B.C. Utilities Commission..

June 16 - The Panel visits Site C to familiarize itself with the project.

June 19 - The Site C Division orders a public hearing to begin on November 3, 1981 and calls for intervenors to register by July 17.

July 28 - An informal public meeting to discuss procedural matters is held in Fort St. John.

October 7 - A prehearing conference is held in Fort St. John to set out the rules for the hearings.

October 27 - The public hearing is delayed until November 24 awaiting the filing of Blue Papers by government Ministries.

1981

November 24 - Formal phased public hearings begin in Fort St. John.

December 11 - Public hearings adjourn for a year-end break.

1982

January 5 - Formal unphased hearings begin in Vancouver.

January 13 - Formal unphased hearings in Vancouver are adjourned.

January 26 - Formal phased public hearings recommence in Fort St. John.

June 24 - Formal phased public hearings in Fort St. John are adjourned.

July 13 - Formal phased public hearings in Vancouver begin.

October 8 - The hearing of evidence is concluded.

October 26 - Final argument opens in Vancouver.

November 2 - Final argument finishes and the Public Hearing is concluded.

This list does not include many administrative and organizational activities.

THE PROCEDURES

The review process falls naturally into four parts:

1. Before the application is referred to the Commission.

2. The period from the reference to the hearings.
3. The public hearings.
4. The preparation of the report and recommendations.

I. BEFORE THE REFERENCE

The whole procedure is governed by the B.C.U.C. Act. This Panel can only comment that the legislation appears to provide the necessary authority to carry out the review procedure as followed for Site C. Further, it does so without generating a significant amount of debate about the nature of the proceedings at least within the hearings themselves. The government must make a number of decisions before the application is referred to the Commission. The following comments are based on the Site C Panel's experience.

(a) The government decided to supplement the Commission by appointing temporary commissioners for the Site C review. The Site C Panel believes this procedure worked well and, if used in the future, will prevent proceedings from becoming inflexible as long as regulations to promote uniformity are not introduced and each panel is left free to do its work in its own way. Furthermore, appointing temporary commissioners gives the B.C.U.C. flexibility in meeting its work load and has cost advantages since no costs are incurred when no major project reviews are under way.

(b) Five Commissioners appear to be appropriate for large projects with province-wide implications: it makes provision for attrition for reasons of illhealth, and it provides a reasonable-sized forum for confidential discussion of different points of view. THE PANEL RECOMMENDS THAT, FOR REVIEWING A PROJECT THE SIZE OF SITE C, FIVE COMMISSIONERS BE USED.

(c) The Site C Panel feels that the B.C.U.C. should not be involved in preparing the terms of reference. However, it would probably be useful if, before completing the terms of reference, the Ministry of Energy, Mines and Petroleum Resources were to discuss them with the B.C.U.C.

If a panel finds its terms of reference inadequate it can ask the Ministry for a review.

THE SITE C PANEL RECOMMENDS THAT THE GOVERNMENT PREPARE THE TERMS OF REFERENCE AND DISCUSS THEM WITH THE UTILITIES COMMISSION BEFORE THEY ARE COMPLETED.

(d) A body of consistent decisions should be built up so that proponents of projects know what is required in an application and what is required in a project to be successful in obtaining an Energy Project Certificate. To preserve continuity and consistency the Site C Panel recommends that successive panels review work on previous projects and assess its applicability to their task.

(e) During the Site C hearings, it became apparent that, prior to submission of the application there had been too little contact between the applicant and various Ministries of the Provincial Government, the regional district and affected municipalities.

THE SITE C PANEL RECOMMENDS THAT FUTURE APPLICANTS BE REQUIRED TO MEET WITH THE RELEVANT GOVERNMENT BODIES TO ESTABLISH THE FACTS OF THE APPLICATION AND TO REACH ANY POSSIBLE PRELIMINARY UNDERSTANDING CONCERNING MITIGATION AND COMPENSATION BEFORE THE APPLICATION IS MADE. IT IS FURTHER RECOMMENDED THAT ALL SUCH ARRANGEMENTS AND THEIR SUPPORTING RATIONALE BE PLACED BEFORE THE B.C. UTILITIES COMMISSION WITH THE APPLICATION SO THAT THEIR EQUITABILITY CAN BE EXAMINED. THE PANEL BELIEVES THAT THIS PROCEDURE WOULD SAVE TIME IN THE HEARING PROCESS.

2. PERIOD FROM THE REFERENCE TO THE HEARING

During this period, the foundation for a successful hearing has to be laid and much of the work of the review is actually carried out. The Site C Panel wishes the government to consider the following points.

(a) Staff and Consultants

A major energy project review, such as the one for Site C, is a major task and involves the expenditure of a considerable amount of money. As such, it justifies a major commitment of personnel from the permanent staff of the Utilities Commission. At a minimum, the following three positions should be filled on a full-time basis for each major energy project review:

(i) Executive Assistant to the Panel

This person should be responsible for carrying out all the Panel's instructions and for administering and organizing prehearing, hearing and report-writing activities.

(ii) Research Director

This person, under the direction of the executive assistant, should be responsible for the technical review before the hearings, for the technical briefing of counsel and the Panel during the hearings, and for preparing drafts of the report after the hearings.

(iii) Hearings and Records Officer

This person should be responsible to the executive assistant for the records of the hearings and of Commission meetings, and for the registration of intervenors. He should also be responsible for the conduct of the hearing itself under the direction of the chairman.

The above officers and the panel must receive adequate clerical support.

The Site C Panel recognizes the difficulty of retaining such highly qualified and experienced personnel. Nevertheless, they are extremely important to a panel's work and, thus, must be available. If such personnel cannot all be obtained from the B.C.U.C. permanent staff on a full-time basis, they must be obtained from other sources.

THE SITE C PANEL RECOMMENDS THAT, FOR FUTURE MAJOR ENERGY PROJECT REVIEWS, AN EXECUTIVE ASSISTANT, RESEARCH DIRECTOR AND HEARINGS AND RECORDS OFFICER BE ASSIGNED PROMPTLY TO THE REVIEW PANEL ON A FULL-TIME BASIS UNTIL THE PANEL HAS MADE ITS REPORT OR UNTIL THE PANEL NO LONGER REQUIRES THEM.

In addition, a number of technical advisers will be needed in the fields of economics, finance, environmental impact, social impact and engineering. The SiteC Panel recognizes that the B.C.U.C. may not always be able to supply these experts from its own staff on a continuous basis. The Site C Division engaged a number of consulting firms to carry out this work. THE SITE C PANEL RECOMMENDS THAT FUTURE PANELS FOLLOW A SIMILAR PRACTICE.

Another very important member of the review team is the Commission's counsel who should have experience in public hearings. THE SITE C PANEL RECOMMENDS THAT FUTURE PANELS APPOINT EXPERIENCED COUNSEL VERY EARLY IN THE REVIEW PROCEEDINGS WITH A CLEAR UNDERSTANDING THAT COUNSEL MUST BE ABLE TO DEVOTE THE NECESSARY TIME TO THE PROCESS OVER ITS FULL TIME SPAN.

(b) Prehearing Meetings

The Site C Panel arranged an informal public meeting during the prehearing period to explain the proposed procedures. The comments and suggestions from prospective participants helped the Panel plan an effective hearing. THE PANEL CONCLUDES THAT THE INFORMAL PREHEARING MEETING IS USEFUL AND RECOMMENDS THAT FUTURE PANELS ADOPT THIS PRACTICE.

A more formal prehearing conference was held about a month before the hearings at which the rules for the hearings were established. THE SITE C PANEL RECOMMENDS THIS PRACTICE TO FUTURE PANELS.

(c) Intervenors

Those people who wish to intervene in the hearings should be called upon to register formally as soon as the application is referred to the Commission. Intervenors should be asked to identify themselves clearly and to advise the Commission in detail of the nature and purpose of their intervention. They should be classified into the following three groups:

(i) Organizations or individuals with expert advice or groups of experts represented by counsel.

(ii) Intervenors acting on their own behalf who wish to cross-examine witnesses.

(iii) Intervenors acting on their own behalf who do not wish to cross-examine witnesses.

(d) Funding and Costs

The B.C.U.C. cannot fund intervenors, but it can award costs. The Site C Panel awarded costs and had them paid by the applicant; it believes this contributed to a fair and comprehensive review process. THE SITE C PANEL RECOMMENDS THAT THE GOVERNMENT REVIEW THE GUIDELINES DEVELOPED BY THE PANEL FOR AWARDING COSTS TO INTERVENORS (MODIFYING THEM IF THEY FEEL IT IS NECESSARY) SO THAT THEY CAN BE USED BY FUTURE PANELS.

(e) Evidence

Some of the information supplied in the Site C application was several years old, and many new pieces of evidence and up-dates were filed during the course of the hearings. This led to some repetition and to delays while the participants studied the new information. THE SITE C PANEL RECOMMENDS THAT ALL FUTURE PANELS INSIST THAT INFORMATION FILED BE AS UP TO DATE AS POSSIBLE AND THAT IT BE FILED TWO MONTHS BEFORE IT IS TO BE HEARD. WHEN, DURING THE COURSE OF THE HEARINGS, EVIDENCE IS REVISED ON THE BASIS OF NEW INFORMATION OR WHEN NEW EVIDENCE IS BROUGHT IN, THE COMMISSION RECOMMENDS THAT TWO WEEKS TO A MONTH BE ALLOWED FOR REVIEW BEFORE IT IS CROSS-EXAMINED. THIS INTERVAL DEPENDS ON THE COMPLEXITY AND VOLUME OF THE MATERIAL TO BE REVIEWED.

When external events change conditions significantly, the Commission should insist on up-dated evidence so that its recommendations are relevant when they are delivered, even if this means delay.

General scheduling of the hearings is appropriate, but scheduling witnesses for particular times should be avoided as much as possible since it leads to costly delays.

(f) Schedules

A schedule for the review should be established as early as possible. The first decision concerns the time needed to prepare for the actual hearings. Allowing adequate time is of utmost importance because it prevents delays during the hearing and makes the whole procedure more efficient. The Site C Panel allowed six months preparation time.

The period prior to the hearing is used by the intervenors to prepare questions for the applicant and for the applicant to respond. The Site C Panel suggests that these answers should be in the hands of the intervenors at least a month before the hearings begin and even earlier if they are complex or appear to differ significantly from the original application.

The prehearing period is also used by intervenors to prepare their own evidence. This evidence should be available two months before it is heard.

THE SITE C PANEL RECOMMENDS THAT FUTURE PANELS ALLOW AMPLE TIME FOR PREPARATION FOR THE HEARINGS.

3. PUBLIC HEARINGS

The objective of the public hearing is to allow interested parties to hear all the evidence on which the review panel bases its decision. The panel does this in a number of ways:

(i) It publishes the application and supplementary testimony.

(ii) It allows intervenors to present evidence to the Commission.

(iii) It allows all participants to explain their evidence.

(iv) It allows participants to test the evidence of witnesses by cross-examination.

Finally, after all the evidence has been heard, each party has the opportunity to present its their opinion on what the evidence indicates and what action the Commissioners should take.

The primary purpose of the hearing is not to provide a forum for participants to persuade the public to their point of view, but to allow the Commission to hear evidence and argument. In addition, it provides an outlet for the frustrations that have built up over the years about the openness, fairness and adequacy of public participation in decision-making on major energy projects. The SiteC Panel concludes that this process is worth while.

In general, the Site C Panel feels that a full public hearing for each major energy project review will be needed in order to obtain the desired level of public participation in the decision-making process. Nevertheless, since the process is time consuming and expensive, the decision with respect to each project should be made on its merits.

The Site C Panel used a number of procedures to control the course of the hearings and to develop an orderly flow of information:

(i) Phasing

The Site C Panel divided the hearings into phases and held witnesses and cross-examiners closely to the issues relevant to the phase. THE PANEL RECOMMENDS THAT FUTURE HEARINGS BE PHASED CAREFULLY AND THAT STRICT ADHERENCE TO THE SUBJECT MATTERS BE INSISTED UPON.

(ii) Location

Holding much of the hearings in Fort St. John undoubtedly contributed directly to the residents' confidence in the review process. But transportation and accommodation were expensive, and personnel suffered a lengthy disruption in their personal lives.

A better arrangement for future hearings might be to hear evidence related to local issues in the area involved, providing the local population is large enough to justify this. The issues would include matters of social, economic, and environmental impact – generally the material covered under Phase IV of the Site C review. For other matters, such as power supply and demand, design adequacy and financial impacts, the hearings could be held in one of the larger population centres of the province, such as Vancouver. In this way, the total accommodation and travelling expenses would be minimized and the process would be readily available to a large segment of the population.

(iii) Types of Hearings

Four types of hearings were employed during the Site C Review:

(a) The Formal Phased Hearings

These hearings were held from 9:30 a.m. to 12:00 p.m. and 1:30 p.m. to 4:00 p.m. The proceedings were kept as strictly as possible to the subject of the phase and the normal order of cross-examination was followed. This type of hearing was held in Fort St. John and Vancouver.

(b) The Formal Unphased Hearings

These were similar to the phased hearings, but the applicant led no evidence and was not subject to cross-examination. Intervenors were allowed to speak on the subject of any phase. These hearings were held only in Vancouver.

(c) The Less Formal Hearings

These were evening hearings held in Fort St. John, Hudson's Hope, Chetwynd, Dawson Creek and Taylor. A verbatim record was kept. All comers, registered intervenors or not, were given the chance to address the Commission. The applicant and the registered Intervenors were not allowed to lead evidence. No cross-examination was allowed although the Commission offered to accept questions for witnesses and to ask them if they appeared appropriate. No one took advantage of this offer. Some 63 people addressed the Commission either as individuals or on behalf of organizations.

(d) Special Hearings

These hearings resembled the less formal hearings and were held on three separate days on three different Indian reserves. Some special arrangements as to seating, translation and conduct of the meeting were made.

The Site C Panel considers that these four types of hearings were adequate to accomplish the objectives of the public hearings. THE SITE C PANEL RECOMMENDS THAT FUTURE PANELS CAREFULLY CONSIDER THE TYPES OF HEARINGS NEEDED TO ENSURE THAT ALL SEGMENTS OF THE PUBLIC ARE HEARD. IT IS FURTHER RECOMMENDED THAT FORMAL UNPHASED HEARINGS, SUCH AS THOSE HELD IN JANUARY IN VANCOUVER FOR SITE C, NOT BE HELD IN FUTURE SINCE THEY TEND TO CONFUSE THE OTHERWISE ORDERLY PRESENTATION AND EXAMINATION OF EVIDENCE HEARD AT THE FORMAL PHASED HEARINGS.

(iv) Order of Cross-Examination

The order of cross-examination used by the Site C Panel was:

(a) Governments - Federal
Provincial
Regional
Municipal

(b) Organizations

(c) Individuals

(d) The Applicant

(e) Commission Counsel

(f) The Commission

The Site C Panel believes that many of the issues raised by organizations and individuals would be handled more expeditiously if the Commission counsel cross-examined before organizations or individuals not represented by counsel. The succeeding cross-examiners would then address concerns that the Commission counsel had not addressed to their satisfaction. The Commission counsel would then need to have the opportunity to cross-examine witnesses a second time just before the Commissioners.

(v) Briefing for the Commission

This Panel believes that the consultants and Commission counsel should brief the panel frequently on the progress and direction of the hearings so that the commissioners understand the thrust of the evidence and the cross-examination. Such briefings should occur prior to hearings and at appropriate times throughout.

(vi) System Plan Review

In the Site C report, the Panel recommends that the government refer Hydro's system plan to the Utilities Commission for a review. Such a review would necessarily cover the question of load forecasting, the sequence and timing of construction of generating facilities, and nonstructural alternatives. Following such a major review it would be appropriate, in accordance with Section 51(3) of the Utilities Commission Act, for the B.C.U.C. to review annually the Hydro's up-dated system plan.

This type of on-going review of the system plan would ensure that, as each major energy project comes up for review, its justification would already be established, so the panel appointed to review the project could concentrate on the questions particular to that project, such as its economic, social, environmental and financial impacts and the adequacy of its design.

The SiteC Division concludes that the justification for each project and for the whole system plan could be better assessed and the specific project considerations could be more efficiently and speedily evaluated in this way.

4. PREPARATION OF THE REPORT

The SiteC Panel has no significant suggestions or comments to make on this part of the review process.